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*Judgment: approved by the court for handing down
(subject to editorial corrections)**

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IN THE COUNTY COURT FOR NORTHERN IRELAND

IN THE MATTER OF THE EXTRADITION ACT 2003

BETWEEN:

REGIONAL COURT IN ELBLAG IN THE REPUBLIC OF POLAND

Applicant

and

KRZYSZTOF JOZEF DUDA

Respondent

Mr Stephen Ritchie Barrister at Law for the applicant
Mr Sean Devine Barrister at Law for the respondent

HHJ Gilpin

Introduction

[1] Krzysztof Jozef Duda (“the requested person”) is presently serving a jail sentence in Poland having been extradited there by order of HHJ Devlin (“Judge Devlin”) on 1 May 2019.

[2] The extradition ordered by Judge Devlin arose on foot of two European Arrest Warrants issued on 10 February 2017 and on 27 October 2017 respectively.

[3] The said European Arrest Warrants arose out of offences committed by the requested person in 2011 and 2012 for which he was subsequently sentenced to terms of imprisonment in Poland.

[4] However, the requested person came to Northern Ireland in 2013 not having served his sentences in Poland and thus the European Arrest Warrants were issued in order that he might be extradited to Poland to serve his sentences.

[5] After the requested person was extradited in May 2019 he has remained in

custody in Poland as a sentenced prisoner. I am told the earliest date he might expect to be released from custody in Poland for the offences in respect of which he was extradited is 22 November 2022.

[6] The issue that now comes before this court concerns what the Extradition Act 2003 (“the 2003 Act”) terms a ‘post-extradition matter’ i.e. a matter which is brought before the court after extradition proceedings have concluded. The statutory basis for such a matter is to be found in section 54 of the 2003 Act.

[7] The 2003 Act provides is that if a person has been extradited to certain countries, of which Poland is one, and a court in the UK subsequently receives a certified request from that country for consent that the person previously extradited may be dealt with in that country for an offence other than one for which the person was extradited the UK court must consider the request at what is termed a ‘consent hearing.’

[8] The post-extradition matter concerning the requested person arises in the following way.

[9] In April and May of 2005 the requested person committed certain dishonesty offences in Poland and then in December of the same year he committed the offence of perjury there too.

[10] The requested person was subsequently sentenced separately for the two sets of offences he had committed in 2005.

[11] However, on 15 January 2009 these original sentences for his separate sets of offending were conjoined and what is termed a “collective sentence” of 1 year 10 months’ imprisonment was handed down. This sentence was suspended from coming into operation.

[12] While the requested person was not present when this ‘collective sentence’ was imposed in January 2009 on 12 February 2009 he was provided with a certified copy of it.

[13] In fact it would appear the requested person had been aware that the hearing on 15 January 2009 was to take place given that on 12 November 2008 he had sent a letter to the court in which he asked that the proceedings be held without participation by him.

[14] On 15 April 2014, by which date the requested person had come to live in Northern Ireland, the court in Poland put the ‘collective sentence’ into effect.

[15] On 31 January 2018 the requested person was arrested in Northern Ireland on foot of the two European Arrest Warrants; one dated 10 February 2017 and the other dated 27 October 2017.

[16] It was on foot of these two 2017 European Arrest Warrants that on 1 May 2019 Judge Devlin ordered the extradition of the requested person to Poland to serve the sentences they were grounded on.

[17] By an application dated 11 September 2019, by which time the requested person, having been extradited, was imprisoned in Poland, the Regional Court in Elblag, Poland made a request ("the request for consent") seeking the consent of this court that the authorities in Poland could deal with the "collective sentence" of 1 year 10 months' imprisonment imposed on the requested person for his offending in 2005 even though he had not been extradited in respect of it.

[18] The request from the Polish authorities was received by the National Crime Agency ("the Designated Authority") on 16 October 2019.

[19] However, it was not until 6 February 2020 that the designated authority issued a Certificate certifying the request it had received back in the previous October.

[20] On receipt of the said certificate by the court the request for consent first came before an appropriate judge on 14 February 2020.

[21] Section 54(5) of the 2003 Act provides in respect of a request for consent that:

"The consent hearing must begin before the end of the required period, which is 21 days starting with the day on which the request for consent is received by the designated authority."

[22] In this jurisdiction there are limited rules in the County Court Rules (NI) Order 1981 concerning the conduct of first instance hearings under the 2003 Act. They do not provide for how request for consent is to be dealt with.

[23] However, in England & Wales the Criminal Procedure Rules do have provisions dealing with Requests for Consent. They are helpful to this court in seeking to understand what is expected to happen within 21 days of the designated authority Receiving the request for consent.

[24] Rule 50.32 of the Criminal Procedure Rules make it clear when considering a request for consent under section 54(5) of the 2003 Act in England & Wales what is required to begin within 21 days of the designated authority receiving the request for consent is a hearing to consider the request namely what the Act terms the 'consent hearing.' This is not the same thing as the court giving directions e.g. as to service on

the requested person nor extending the required period. The Criminal Procedure Rules suggest that the consent hearing is a substantive hearing of the request and not judicial case management issues.

[25] I am satisfied that the distinction between judicial case management directions and a substantive hearing of the request for consent is applicable for the way the courts in this jurisdiction deal with Requests for Consent.

[26] With the request for consent having been received by the designated authority on 16 October 2019 and the matter not being certified by it until 6 February 2020 the statutory time period prescribed by section 54(5) had clearly been breached long before the matter first came before an appropriate judge on 14 February 2020.

[27] However, sections 54 (6) and (7) provide a saving mechanism. They provide:

“(6) The judge may extend the required period if he believes it to be in the interests of justice to do so; and this subsection may apply more than once.

(7) The power in subsection (6) may be exercised even after the end of the required period.”

[28] Therefore, on 14 February 2020 it would have been open to the requesting state to invite the appropriate judge to extend the required period if he considered it to be in the interests of justice to do so.

[29] However, the issue of an extension of the required period was not raised when the case came before the appropriate judge and, accordingly, he did not make an extension order.

[30] Section 54 (8) of the 2003 Act sets out the consequences that flow from a court not making an extension order in the circumstances the appropriate judge encountered. It provides:

“If the consent hearing does not begin before the end of the required period and the judge does not exercise the power in subsection (6) to extend the period, he must refuse consent.”

[31] As a fact the appropriate judge did not extend the required period when the matter came before him on 14 February 2020.

[32] In my view given the wording of section 54(8) as to the consequence of not extending the required period the request for consent was refused, even if the judge did not say so in express terms.

[33] Despite what occurred on 14 February 2020 the matter came before another appropriate judge on 28 February 2020. In contrast to what occurred two weeks earlier on this occasion the requirement for an extension of time was specifically raised with the judge who was invited to extend the required period. However, the appropriate judge did not extend the required period on 28 February 2020 but rather adjourned matters until 1 May 2020 when he said he would deal with it in a “rolled up hearing” considering the issue of an extension of time and, if necessary, the substantive application.

[34] Even if, which I do not accept, the request for consent, had not been refused previously when the matter was before the initial appropriate judge on 14 February 2020 I am of the view the wording of s54(8) means that when came before a second appropriate judge and he similarly did not exercise the power to extend the ‘required period’ on 28 February 2020 the request for consent must be deemed to have been refused at that stage.

[35] The “rolled up hearing” directed on 28 February 2020 did not proceed as planned on 1 May 2020. Rather the matter came before another appropriate judge on 25 September 2020. On that occasion the appropriate judge raised the issue of the extension of the required period with the representatives of the parties. Those appearing before the appropriate judge appeared to be under the misapprehension that an extension of time had already been granted in February 2020. However, on 25 September 2020 the appropriate judge, as he put it, for a “belt and braces” approach granted an extension of time until 11 December 2020.

[36] However, in my view given the request for consent had been deemed refused by reason of section 54(8) in February 2020 the extension mentioned by the third appropriate judge on 25 September 2020 did not serve to revive the request for consent.

[37] The matter then came before another appropriate judge on 10 December 2020 who listed it for hearing in January 2021. No request was made for the extension of time granted in September 2020 to continue beyond 11 December 2020 and the appropriate judge did not do so.

[38] The hearing did not proceed in January 2021 and was adjourned on several occasions thereafter while decisions of other courts were awaited. On no occasion thereafter did the court grant a further extension of the required period.

[39] When the matter came before me on 24 January 2022 certain submissions were made including those on the issue of the extension of time. Given the nature of the hearing before me on 24 January 2022 I find that to be the commencement of the consent hearing.

[40] The hearing could not conclude on 24 January 2022 as a decision from the Divisional Court in this jurisdiction in *Poland v Czerwonobroda* was awaited. I therefore exercised the power in s54(9) and adjourned the consent hearing.

[41] The decision of the Divisional Court in *Poland v Czerwonobroda [2022] NIQB 44* was handed down in June 2022 and, thereafter, certain additional written and oral submissions were made before me.

[42] The consent hearing concluded on 6 September 2022 when final submissions were made.

[43] As noted above in my view given that in February 2020 when the request for consent came before the court and the court did not exercise its power to extend the required period the request for consent has been refused.

[44] However, if I am wrong in that and there remains before me an extant request for consent I must consider, pursuant to section 54(6) of the 2003 Act, whether to extend the required period. Section 54(6) makes it clear I can do so if I believe “it to be in the interests of justice to do so.”

[45] Unlike other parts of the 2003 Act section 54 does not set out what factors the court should consider in applying an interest of justice test.

[46] While the phrase “interests of justice” is ambiguous it demands that in matters of judicial discretion the court must approach its determination in a principled and not an arbitrary fashion.

[47] In a ‘post extradition matter’ it seems to me the balancing exercise the court must conduct in considering the ‘interests of justice’ must involve the interest of the requesting state in having those sentenced in its courts being in a position to be required to serve their sentences while the interest of the requested person is focused on the possibility of them having to serve a sentence having arisen in a procedurally fair manner.

[48] In the instant case I have decided to exercise my discretion not to extend the required period.

[49] Firstly, If I am wrong that when the court did not extend the required period in February 2020 there was a deemed refusal it nevertheless offends the courts sense of fairness for the request for consent not to be refused when this was the mandated consequence of an appropriate judge not extending the required period.

[50] Secondly, no explanation has been offered to the court as to why the designated authority delayed furnishing the certified request for consent to the court. By the time

the request for consent was sent to the court it was already significantly beyond the prescribed time.

[51] Furthermore, when the requested person came to Northern Ireland in 2013 the suspended sentence that gives rise to the request for consent had not been put into operation. It was put into operation in April 2014. From that date the requested person became unlawfully at large although seemingly he was unaware of his new status. However, no explanation has been offered to the court as to why the requesting state did not issue a European Arrest Warrant in relation to this matter when the requested person was living in this jurisdiction. This point must of course be seen in the context of the requesting state issuing an initial European Arrest Warrant in February 2017 for one set of offending and then a second one in October 2017 for another set of offending. If the matter that forms the subject of the request for consent had been dealt with when the requested person was within this jurisdiction he could have consulted properly with his legal representatives in a manner that they submit was denied to him when he was returned to prison in Poland.

[52] Finally, it is submitted on behalf of the requested person that in the particular chronology of his case and its correlation with the outbreak of the Coronavirus pandemic and its associated 'lock downs' the failure of the designated authority to bring the request for consent timeously has caused particular difficulties in taking instructions from him in prison in Poland. Mr Devine in his written submissions submits this issue has meant the requested person's "effective participation was impossible" as regards these proceedings. The court has some sympathy for this submission.

[53] Given the conclusions of the court on the extension of the required period it is not necessary in respect of this case for the court consider the questions that section 55 of the 2003 Act ordinarily requires to be addressed at a consent hearing nor to deal in detail with matters raised in the course of submissions.

[54] That said for the sake of the completeness the court's conclusions on the matters raised by the requested person are set out in summary form below.

[55] The requested person submits that the request for consent does not emanate from a "judicial authority" as the 2003 Act requires. The requested person submits recent legislative developments in Poland have compromised important principles of independence and impartiality in relation to the judiciary in Poland. In this jurisdiction the Divisional Court of the High Court of Justice recently handed down its judgment in *Czerwono broda* . The court followed what it termed "the current jurisprudence, both in the CJEU and domestically" by endorsing the approach of the Divisional Court in England & Wales in *Wozniak v The Circuit Court* [2021] EWHC 2557 (Admin). The Divisional Court in *Wozniak* holding that though there was a real risk of a breach of the rule of law in Poland, there was not sufficient evidence to show a risk of the breach of the essence of their right to fair trial in the case of each requested

person. I agree with that approach and in the instant case find nothing in the particular circumstances of the requested person that would suggest a risk of a breach to a fair trial.

[56] The requested person submits that the principles of reciprocity and mutual recognition “are absolutely critical requirements for a functioning system of extradition.” However, it is submitted on his behalf that following the United Kingdom leaving the European Union that Poland has “in effect unilaterally decided to rescind the extradition agreement that existed.” However, in this case the request for consent was made on 11 September 2019. At this time the United Kingdom was a Member state of the European Union and was thus continuing to be subject to the Council Framework Decision of 13 June 2002 which was given effect to by the 2003 Act. In any event even after the United Kingdom left the European Union, by reason of Part 3 at Title VII of the Trade and Co-operation Agreement the United Kingdom reached an agreement on extradition matters with EU Member States to apply from 11pm on 31 December 2020. The extradition provisions of the Trade and Co-operation Agreement now form part of domestic law having been incorporated into the 2003 Act. In short compass whether before or after ‘Brexit’ the 2003 Act remains in force and governs extradition matters between the United Kingdom and, inter alia, Poland, and thus the court has no hesitation in rejecting the requested person’s submission on this issue.

Conclusion

[57] For the reasons set out above the court refuses the request for consent.